

**COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTERS	<input type="checkbox"/>	DATE	<u>April 1, 2008</u>
MOTOR CARRIER MATTERS	<input type="checkbox"/>	DOCKET NO.	<u>2007-286-WS</u>
UTILITIES MATTERS	<input checked="" type="checkbox"/>		<u></u>

**SUBJECT:**

DOCKET NO. 2007-286-WS - Application of Utilities Services of South Carolina, Incorporated for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service – Discuss with the Commission a Petition for Rehearing or Reconsideration and the Motion for Issuance of Order Approving Bond Filed by Benjamin P. Mustian, Esquire, on Behalf of the Applicant.

**COMMISSION ACTION:**

I move that we deny and dismiss the Petition for Rehearing or Reconsideration filed by Utilities Services of South Carolina in this Docket. The Company states that our conclusion in Order No. 2008-96 that it did not meet its burden of proof is erroneous. I believe that we were correct in our determination on this issue. First, we held that the Company failed to meet its burden of proof because the testimony did not reveal in any detail where the capital improvements and on-going operational programs discussed by the Company were implemented. The Company alleges that there was independent evidence from the Office of Regulatory Staff that corroborates the fact that the funds for these projects were expended. Even though there may have been some evidence that the monies were spent, we correctly ruled that we were unable to determine, for the most part, which subdivisions benefited from any stated expenditures. This was especially true in light of the customer testimony as to continuing poor quality of service in a number of subdivisions. There was no arbitrary departure from past Commission precedent. The Company also seems to rely on non-binding precedent from the circuit court in its allegations of error, along with erroneous interpretations of certain Supreme Court cases. Utilities Services also wrongly believes that only parties to the case may raise challenges to a Company's expenditures. The Company did not meet its burden of proof in these areas.

Second, we held that the Company failed to prove that certain payments to its affiliate Bio-Tech for sludge hauling services were reasonable. Utilities Services states that this was erroneous because its witness testified that the rates charged to Utilities Services by Bio-Tech were the same as those charged by Bio-Tech to other public utilities and governmental utilities for the same services and were market rates. The question involved with regard to affiliate transactions is not necessarily only whether Bio-Tech charged the same rates to other utilities as it did to Utilities Services, but whether another non-affiliated company could provide the same sludge hauling service to Utilities Services at a less expensive rate. The

Company provided no such data to this Commission and therefore failed to meet its burden of proof as to the affiliate transaction question.

Third, we cited the Company's failure to address a DHEC notice of violation regarding an exceedance of lead levels in the Shandon subdivision during the period June through September, 2006. Utilities Services cites error, stating that the letter does not document any violation of a DHEC regulation by the Company. The Company then goes on to cite a non-binding Circuit Court case to support its position. The Company presented virtually no evidence in the record to address this issue, so I believe we correctly held that it failed to meet its burden of proof on the question.

Fourth, we held that questions of fairness were raised with regard to the price paid by the distribution-only customers of the Company. Our Order pointed out that the Company proposed an increase in rates to the distribution-only customers. Our difficulty was the apparent additional disparity between the rates proposed to be charged by the Company to these customers, as compared to the rates charged by various adjoining municipal systems. Because the Company provided no additional information as justification for the proposed rate increase to the distribution only customers in light of this disparity, we held that the Company again failed to meet its burden of proof. The Company alleges error in this conclusion and cites a case from the Connecticut Commission, among other cases, in support of its position. Utilities Services states that we have departed from our past precedent in our holding on this subject. Again, I believe that our findings were appropriate in this area, and that the Company's allegations should be denied.

Utilities Services also alleges violations of its due process rights with regard to this Commission's handling of customer testimony, and disagrees in general with our position on the receipt of customer complaint testimony. We have discussed these matters in several recent Commission Orders, and it is clear that the Company's positions are erroneous and must be denied as such.

Lastly, the Company states that our "General Discussion" section of Order No. 2008-96 is affected by errors of law in several particulars. Utilities Services alleges, for example, that our reference to the Seabrook Island Property Owners Association case is misplaced because that company was regulated using operating margin methodology, and not on a rate of return basis such as is seen with Utilities Services. This is an insignificant distinction, given that the proposition of law quoted in the Order had to do with quality of service, not ratemaking methodology. The remaining allegations of the Petition are likewise without merit.

Accordingly, I again move that we deny and dismiss the Company's Petition for Rehearing or Reconsideration. However, I reluctantly move that we grant the Motion for Issuance of an Order Approving Bond, pending determination of the Company's appeal of our Orders, since the law requires it. Bonding is defined and discussed in S.C. Code Ann. Section 58-5-240 (D). It appears that this statute allows the utility to proceed to put its rates into effect under bond, once a Petition for Rehearing is filed, and only allows this Commission to examine the amount proposed for the bond and the sureties. The amount and sureties appear to be reasonable in this case. Accordingly, I move that this Commission approve the amount stated by the Company which is \$772,965, and the sureties, with one stipulation, that the bond form address the customers of Utilities Services, and not the customers of Carolina Water Service, Inc. as the proposed bond form presently does. Lastly, I move that we hold in abeyance any ruling on the method by which the Company shall make any refunds, should refunds become necessary.

PRESIDING Hamilton

Session: Regular

Time of Session 1:00 P.M.

MOTION YES NO OTHER

CLYBURN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Absent
FLEMING	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MOSELEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WRIGHT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

APPROVED \_\_\_\_\_  
APPROVED STC 30 DAYS \_\_\_\_\_  
ACCEPTED FOR FILING \_\_\_\_\_  
DENIED \_\_\_\_\_  
AMENDED \_\_\_\_\_  
TRANSFERRED \_\_\_\_\_  
SUSPENDED \_\_\_\_\_  
CANCELED \_\_\_\_\_  
SET FOR HEARING \_\_\_\_\_  
ADVISED \_\_\_\_\_  
CARRIED OVER \_\_\_\_\_  
RECORDED BY T. DeSanty

Commissioner Clyburn was attending the CTIA Conference in Las Vegas, Nevada